1922

Department of L.R.

OFFICE Bd of Rev

STATION Madras

No. 157

Dated 9-2-1922

A 646/22

To whom sent		Date	Initial
	Given for copying		
	Copied		
	Examined		
	Signed		
	Given for despatch		
	Despatched		
	Indexed		
Pages in the file	To be destroyed on		

(SUBJECT.)

Suits (S. Kanara) Puttur Dt. Munsiff. Os. no 594/20
Acquisition Pwrs. Defence
Divl Officer residence -
Sanctioned -

Ref on C.No.7149-21-V3. South Kanara Collector's Office

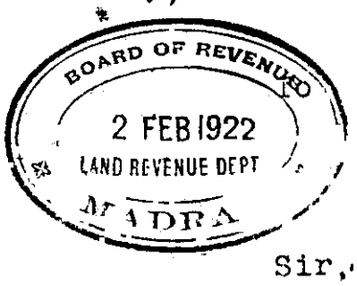
Mangalore, 30th January 1922

From

A 646

M. R. Ry., A. Ramacha Nedungadi, Avl.,F.A.,B.L.,

Collector of South Kanara.



The Secretary to the Board,

Land Revenue, Madras.

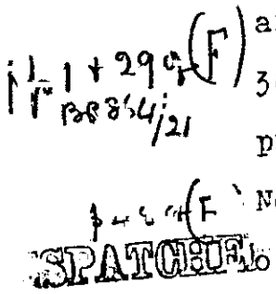
Sir,

Suit--594/21-- Puttur Munsiff's court--Kanchan Venkataramanaya and B.V.Krishna Rao- Versus- Secretary of State for India in Council.

******

The suit is for a declaration that the proceedings taken as a result of the notification dated 14-7-21, published under section 6 of Act I of 1894 in the Fort Saint George Gazette of 26-7-21 with regard to the acquisition of S.No.145/1 of Puttur Casba village with the buildings thereon for the Puttur Divisional Officer's residence are ultra viris and null and void and for a permanent injunction restraining Government from taking further action whatsoever on the authority of the said notification or of the award passed in pursuance of the said notification (copy of the plaint is enclosed).

2. The circumstances under which the land in question with the buildings thereon was proposed to be acquired are set forth in detail in this Office letters Ref C.No. 3638/Rev.'20, dated 14-2-20 and 31-3-20 to the Board. The proposal was approved by Government in their order Misc., No.912.W., dated 14-7-21 and notification under section 6 of the Land Acquisition Act was published in the Fort --- Saint George Gazette dated 26-7-21.



3. Of the two plaintiffs, the 1st is the Mulagar of the land while the 2nd is the Mulagenidar. As soon as notice under section 9 of the Land Acquisition Act was --- served on them by the Officer appointed to acquire the -- land and the buildings thereon, their vakil filed a petition on 3-9-21 stating that as no notice under section 4

section 4 of the Land Acquisition Act was published in -- the case, the notification published under section 6 of the Act and the subsequent proceedings were null and --- void and threatening to sue to Government unless pro-.ceedings under the Land Acquisition Act were dropped.My predecessor regarded the objection as untenable and recorded the suit notice on 15-9-21, and after necessary --- cnquiry, the Land Acquisition Officer passed the award on 28-10-21. p10 cf

4. It is true that notification under section 4, was not published in the case. Para 7 of B.S.O.No.90 requires that whenever land islikely to be needed for -- any public purpose and entry thereupon for surveying the land or ascertaining its adaptability for such purpose is objected to by the owner or occupier, a draft notification under section 4 of the Land Acquisition Act should be --- submitted to Government for publication in the Official Gazette. It will be seen from the 1st plaintiff's statement dated 21-12-19 and the 2nd plaintiff's petition dated 22-12-19 which are among the enclosed records that long before the publication of section 6 notification, -- both of them were aware of the proposal to acquire the -- land and the buildings thereon for Puttur Divisional --- Officer's residence. A notice had also been issued to the 2nd plaintiff on 22-12-19apprising him of the proposal and requesting him not to make any improvements on the land. Soon after the issue of this notice, ----- Revenue and D.P.W. Officers had entered upon the land to prepare valuation statement and to find out the adaptability of the land and the buildings for Divisional Officer's residence and the plaintiffs had not objected to the entry. Hence there was no necessity to publish the notification under section 4. The Government Pleader, Mangalore, is of opinion that as the main provisions -- of the Land Acquisition Act viz., the notification -- under section 6 and the notice under section 9 of the Act have been followed in acquiring the property, the plain-

p20 cf Vol I

p14 cf Transl at p15 cf

p17 cf.

p21 cf

p22 cf

plaintiffs are not entitled to impugn the legality of the acquisition proceedings from the mere fact that -- notice under section 4 was not published and that the suit can be successfully contested by Government and I agree with him. Please vide Government Pleader's --- letter dated 26-1-22, copy of which is enclosed.

5. The several alleagtions made in the plaint are fully dealt with in the written statement prepared by the Government Pleader which is herewith submitted for the Board's approval, together with a copy of the affidavit from the Land Acquisition Officer to be filed in the court along with the statement.

6. The 1st plaintiff is a rich land holder of --- Puttur, while the 2nd is an influential vakil of the Puttur Munsiff's court. The Government Pleader says that it is desirable to have the suit transferred to some court in Mangalore as otherwise there may be a good deal of difficulty in getting the necessary evidence on behalf of Government. The plaintiffs have already requested the Land Acquisition Officer to refer the case to the District Court under section 18 of the Land acquisition Act. It seems therefore --- that the suit may also be tried by the District Court. I accordingly propose to ask the Government Pleader to apply to the District Court for the transfer of the -- suit to its own file.

7. The plaintiffs have applied for temporary injunc-tion restraining Government from taking immediate --- possession of the property and the application has been posted for hearing to 7-2-22. The Government Pleader has already been asked to oppose the application.

8. The marginally noted records are enclosed together with a statement in the form prescribed in B.S.O No.93.

---

1. Copy of plaint, 2. Copy of the award passed in the L.A case. 3. 1st plaintiff's statement. 4. 2nd plaintiff's petition. 5. Copy of notice issued to 2nd plaintiff on 22-12-19. 6. Copy of Government Pleader's letter dated 26-1-22. 7. Copy of petition of plaintiff's vakil dated 31-8-21. 8. Draft written statement. 9. Copy of the affidavit of the L.A.Officer dated 27-1-22.

I

I have the honour to be,

Sir,
Your most obedient servant,

O B Mambrai
31-1-12.
For Collector.

30-1-12

A M 1.12

Form A.—Defence of Suits

IX 1—1-12

Date of the plaint.	Date of service of the summons on the Collector.	Date of Collector's letter.	Date of hearing.	Explanation for delay where a clear fortnight is not allowed to the Board for the consideration of the case.
1	2	3	4	5
2·11·21	12·11·21.	30·1·22.	13·2·22.	The connected records which were called for from the Tahsildar of Uppinangadi were received on 21·12·21. They were forwarded to our Vakil at Puttur on 24·12·21 to prepare & send the draft of the written statement to be filed. As he had gone to Madras for recouping his health, he returned the records saying that he was not in a position to conduct the defence in the suit and requesting that some other pleader might be engaged. The records were received back on 10·1·22. They were sent to the Govt. Pleader, Mangalore, on 16·1·22 to prepare the draft of the written statement. His reply was received on 27·1·22

South Kanara
Collector's Office,
Dated 30·1·1922

D. Mangalore
31.1.22
For Collector.

30-1-22

No 1·22

In the Court of the District Munsiff of Puttur.

Original suit No.594 Of 1921.

1. Kanchan Venkataramanaya, son of Soora-
pppaya, residing in Bajathoor village, Nerinke
Magane, of the Uppinangady Taluk, Land Holder.
2. B. Venkatakrishna Rao, son of Sheshgiri
Rao, pleader, and land holder in Puttur Casba
of the Uppinangady Taluk. } Plaintiffs

Versus.

The Secretary of State for India in Council
by the Collector of South Kanara, Mangalore. } Defendant.

*****

The plaintiffs abovenamed beg to state as follows under section 26 of the Code of Civil Procedure 1908.

1. The second plaintiff came to Puttur and settled -- down there to practise as a pleader about 15 years ago, hiring a house and compound at first and subsequently --- acquiring it from the auction purchaser at a court sale. The compound being considerably below the road level was being water-logged during the rains, with the result that the house in it was always damp and dingy, and the second plaintiff and his family were constantly suffering from general ill-health and frequently from actual sickness also.

2. Immediately to the east of, and adjoining, the above menticned insanitary compound, is a small hillock with a house on its top, more fully described in the schedule here-to annexed and belonging to the 1st plaintiff, who is a big pattadar, living ~~living~~ in his own lands in a village at some distance from Puttur, and it naturally struck the second plaintiff that he would secure peace and comfort if he could get that house. The first plaintiff also at --- about this very time, became desirous of retaining the 2nd plaintiff as his permanent legal adviser, so that he might save the additional benefit of lodging with him whenever he had occasion to visit Puttur. He, therefore, offered to lease it in perpetuity at a specially favourable reduced rental to the second plaintiff who accordingly got a permanent lease thereof by a registered deed dated 29-10-19 in

his favour.

3. Mr. M.S.Pais, the then Reveneu Divisional Officer, Puttur, was occupying it at the time, but he was spending most of his time on tour, and even when he was at Head Quarters, he used to live alone in the house, his family being permanently at Mangalore. The second plaintiff, therefore, thought that there could not be any-thing un-natural in securing the house and compond for himself, but so as not to inconvenience the then occupant in any way, the second plaintiff apprised him of his lease and informed him at the same time that he -- could continue to occupy the house until his transfer, as he was expected to be transferred shortly. That Officer, however, somehow felt piqued at his not being approached previous to the execution of the lease, and taking it as a personal insult precipitately vacated the house, moved into another house and being determined to dislodge the 2nd plaintiff, as it subsequently came to light, straight way set in motion proceedings for compulsorily acquiring his previous abode for --- Government under the provisions of the Land Acquisition Act I of 1894.

4. The Second plaintiff, being entirely in the dark as to the trouble which was thus secretly brewing, set about repairing the deserted house so as to make it -- suit his particular needs and requirements, and moved into it in due course. He effected considerable improvements at a heavy cost and was setting down to a life of domestic peace and health free from his former worries, illness and anxieties, when he all of a sudden received a communication from the Collector of the District that it had been proposed to acquire the compound with the buildings thereon and that he might, therefore, desist from proceeding further with the projected and partly executed improvements to the house. This communication came as a rude shock to the second plaintif who therupon sent a reply dated 22-12-19 to the Collector explaining the circumstances which obliged him to

to take the house on lease for himself and pointing out the inexpediency of acquiring the house compulsorily. In the course of that reply the second plaintiff happened to refer to some events and incidents which influenced Mr. Pais in fixing upon the second plaintiff's newly -- acquired house alone for acquisition and in rejecting -- other suitable sites and buildings. From thence-forward the matter assumed the aspect of almost open personal spite on the part of Mr. Pais against the second plaintiff and plaintiffs believe that all the proceedings taken -- subsequently in the matter have been tainted by this personal ill-will and malafides.

5. In a later communication, dated 31-12-19, --- addressed to the Collector, the second plaintiff represented that the proposed acquisition proceedings were quite unnecessary, and that if Government were keen on providing the Revenue Divisional Officer with quarters at public expense, there was other suitable sites and -- buildings available. A long interval passed thereafter without anything being done by the authorities to the knowledge of the plaintiffs, and it was believed that the second plaintiff would be given a reasonable opportunity before any final decision would be arrived at, to prove the truth of his representations. But the personal spite and ill-will, which the second plaintiff had all too un-consciously aroused in Mr. Pais, who continued to be in charge of the Division for a long time after, have worked out its havoc as appeared clear lateron, and in the issue of the Fort Saint George Gazette, dated 26-7-21 was published a declaration, bearing date 14th July 1921 and purporting to be under section 6 of the Land Acquisition Act I of 1894, to the effect that His Excellency the -- Governor of Madras in council thereby declared that the land and ~~the~~ buildings described therein, and described in the schedule hereto annexed, were needed for a public purpose, to wit, for quarters for the Revenue Divisional Officer, Puttur.

6. Plaintiffs aver that Government have failed to take all proper steps which it was obligatory on them to take under the provisions of the said Land Acquisition Act. The entire proceedings taken in the matter are, therefore, illegal and null and void abinitio. On account of the circumstances set forth above, plaintiffs believe that the several illegal acts of both omission and commission which have characterised the proceedings so far, have been due to an inordinate hurry on the part of the authorities, who wanted to get the whole matter through in a comparatively very short period of time, the persons in office and concerned in conducting the land acquistion proceedings in its different stages, being influenced by the personal spite, ill-will and malafides alluded to above. Plaintiffs believe further that it was that same influence that culminated atlast in the passing of an award on the 28th October 1921 by the officer appointed to perform the functions of a collector under the declaration referred to above. Objection having been taken before that Officer to his proceeding further in the matter in view of the illegalities, a registered notice of the same had also been sent to the Collector of the District on 31-8-21 on behalf of the plaintiffs, informing him of the plaintiff's intention to file a suit against Government for the necessary reliefs. This was further intimated to the Land Acquisition Officer himself on 1-9-21, and a copy of the lawyer's notice sent to the Collector was also supplied to the Land Acquisition Officer, but he presumably in order to prevent the plaintiffs from seeking their lawful remedies in a court of law before passing his award, the Land Acquisition Officer has, in precipitate haste, actually passed his award straightway without either having the necessary measurements taken or making the necessary enquiry, thereby deli-berately infringing and violating express provisions of the Law. Hence this suit.

7. The registereed notice issued to the Collector of the District as representing the defendant has been acknlowledged on his behalf on 2-9-21.

8. The cause of action for this suit arose within the jurisdiction of this court on and from July 1921 from the date of, and the date of publication of the declaration under section6

section 6 of Act I of 1894 in the Fort Saint George Gazette.

9. The palintiffs value the reliefs claimed in this suit at Rs.105/- for purposes of jurisdiction and court fees.

10. The plaintiffs therfore pray for :-

(1) A declaration that the entir proceedings taken as a result of the notification, dated 14-7-21, published under section 6 of Act I of 1894 in the Fort Saint----Rs.100, George Gazette of 26-7-21 with regard to the propoeed acquisition of the land and the buildings described in the schedule hereto annexed are ultra vires, null and void

(2) a permanent injunction restraining Government from taking any further action whatsoever on the authority of the said notification or on the authority of the illegal award that has since been passed on the authority of and in due pursuance of the said notification. ... Rs.5/

(3) a decree in favour of the plaintiffs for the costs of this suit together with such other reliefs as may be natural and incidental to this suit and as might seem proper to the court.

Schedule

Description of property.

Dated November 1921.

Original plaint is signed by plaintiffs and verified by 2nd plaintiff and signed by plaintiffs' vakils Messrs B. Mangesh Rao and M. Anantha Rao.

True Copy.

Sd. M. Anantha Rao
Pleader for Plaintiffs.

(True copy)

For Collector. 31.

A W A R D.

Serial No.1of 1921

made by the Land Acquisition Collector and Tahsildar of Puttur under section 11 of the Land Acquisition Act I of 1894.

1. Whereas a piece of land measuring acres 2.16 and situated in the village of puttur, Uppinangady Taluk, in the registration Sub-District of Uppinangady in the District of South Kanara, and registered in the name of Kanchan Venkataramanaya of Bajathur as mulagar and occupied by Mr.B.Venkatakrishna Rao of Puttur Casba as mulagenidar and specified below, has been declared by Government at page 783 of the Fort Saint George Gazette, Part I dated 26-7-21 to be needed for a public purpose to wit for quarters to the Revenue Divisional Officer, Puttur, the undersigned after full enquiry into the case and due consideration of the various circumstances connected with the acquisition as herebefore set forth makes the following awardunder his hand.

(i) The true area of the land is acres 2.16.

(ii) The compensation allowed for the land under section 23 is Rs.2549-8-9, as shown below.

	Rs. As. Ps.
(a) the market value of land subject to full assessment exclusive of trees at Rs.300/- per acre. ...	648- 0- 0-
(b) Valuation on account of	
1) buildings etc.	1.170- 0- 0.
2) wells.	100- 0- 0.
3) Trees.	82- 0- 0.
(c) Valuation on account of improvements effected by the Mulagenidar.	217- 0- 0-
(d) 15 per.cemt. on items a,b,c.	332- 8. 9.
Total.	2,549- 8- 9.

iii. The persons to whom the compensation is due:-

	Rs. A. P.
(1) Kanchan Venkataramanaya, Mulagar and registered holder.	2,300- 0- 0.
(2) B. Venkatakrishna Rau, mulagenidar and occupier.	249. 8- 9.

Survey No.	Extent.	Name of registered holder or occupier.	Boundaries of the land.			
			North.	East.	South.	West.
S.No. 145/1.	Acres. 2.16.	1. Kanchan Venkatramanaya, Mulagar and Registered Holder. 2. B. Venkatakrishna Rao, Mulageni tenant and occupier.	S.No. 137/A.	S.No. 145/3.	S.Nos. 147/8 and 174/1.	S.Nos. 147/1,8 and 145/2.

2. The plot described above contains a tiled house with two outhouses, viz., a latrine and a cowshed, the tree growth detailed in the enclosed schedule prepareed by the Revenue Inspector of Puttur and also five wells of which four are abandoned ones. Mr. Kanchan Venkataramanaya is the registered holder and mulagar of the plot and he has leased it on mulageni to Mr. B. Venkatkrishn Rao for an annual rental of Rs.110/-. The latter is the present occupier and enjoyer of the ~~xxxxxxx~~ holding. Both these claimants have filed a joint statement through their vakils. They protest against the acquisition of the holding, and subject to this protest they claim a compensation of Rs.26,812/- for the land and buildings etc. thereon. To verify this claim, which I consider preposterous , I directed the Revenue Inspector of Puttur to go into separate valuation of the land, buildings, trees, etc., with the assistance of the Local Fund Section Officer. Mr. Venkata Krishna Rao, however, did not allow the Revenue Inspector to do the work and wanted ~~his~~ the authority for his (Revenue Inspector's) doing it. This was pointed out to him . Nevertheless he refused to allow the Revenue Inspector to do the work which was ordered in his own interest and he questioned my authority to depute the Revenue Inspector for the work. He was not prepared to allow me also to take measurements of the buildings etc.which were necessary to verify whether the amount claimed by him and the mulagar in their joint statement is reasonable. He refused to allow this work to be done at his own risk. I am therefor-e obliged to pass the award on the basis of information and particulars available.

3. The house on the plot appears to have been built about 35 years ago, i.e. so long back as 1887, and it is called even now Deputy Collector's Bungalow, as it was in the occupation of several deputy Collectors till it went over to the possession of Mr. Venkat

Survey No.	Extent.	Name of registered holder or occupier.	Boundaries of the land.			
			North.	East.	South.	West.
S.No. 145/1.	Acres. 2.16.	1. Kanchan Venkatramanaya, Mulagar and Registered Holder. 2. B. Venkatakrishna Rao, Mulageni tenant and occupier.	S.No. 137/A.	S.No. 145/3.	S.Nos. 147/8 and 174/1.	S.Nos. 147/1,8 and 145/2.

2. The plot described above contains a tiled house with two outhouses, viz., a latrine and a cowshed, the tree growth detailed in the enclosed schedule prepareed by the Revenue Inspector of Puttur and also five wells of which four are abandoned ones. Mr. Kanchan Venkataramanaya is the registered holder and mulagar of the plot and he has leased it on mulageni to Mr. B. Venkatkrishn Rao for an annual rental of Rs.110/-. The latter is the present occupier and enjoyer of the ~~kxkkdxxg~~ holding. Both these claimants have filed a joint statement through their vakils. They protest against the acquisition of the holding, and subject to this protest they claim a compensation of Rs.26,812/- for the land and buildings etc. thereon. To verify this claim, which I consider preposterous , I directed the Revenue Inspector of Puttur to go into separate valuation of the land, buildings, trees, etc., with the assistance of the Local Fund Section Officer. Mr. Venkata Krishna Rao, however, did not allow the Revenue Inspector to do the work and wanted ~~his~~ the authority for his (Revenue Inspector's) doing it. This was pointed out to him . Nevertheless he refused to allow the Revenue Inspector to do the work which was ordered in his own interest and he questioned my authority to depute the Revenue Inspector for the work. He was not prepared to allow me also to take measurements of the buildings etc.which were necessary to verify whether the ~~amo~~ amount claimed by him and the mulagar in their joint statement is reasonable. He refused to allow this work to be done at his own risk. I am therefore obliged to pass the award on the basis of information and particulars available.

3. The house on the plot appears to have been built about 35 years ago, i.e. so long back as 1887, and it is called even now Deputy Collector's Bungalow, as it was in the occupation of several Deputy Collectors till it went over to the possession of Mr. Venkat

Mr. Venkatkrishna Rao in November 1919. The house does not appe to be a substantial one, its walls being of mud and the roof wood work being badly infested with white ants. The building with th out-houses and the compound wall (of mud) seem to have cost the mulagar about Rs.1200/- while the value of the subsequent improvements effected to the buildings etc., excluding those recently made by Mr. Venkat krishna Rao and which will be dealt with separately may be estimated at Rs.600/-. From the total value of the buildings thus arrived at , allowance has to be made for deterioration. Usually 30% to 50% is said to be deudted on this account and in the present case at least 35% will have to be deducted in view of the building being of mud walls and about 35 years old.

4. As regards the site, it is a barren piece of dry land assessed at one rupee per acre and devoid of water supply in summer. It was assigned on darkhast to the predecessor-in-title of the mulagar in 1887. Bagayath land more valuablethan this plot and situated in the heart of the town appears to have been paid for at Rs. 300/- per acre, when the same was acquired at the end of December 1917, for the Government Girls' School Puttur. Times have not very much changed since then. Neverthe less the same rate of Rs.300/- per acre will be adopted inthis case though the land is classed dry.

5. The plot contains five wells, of which four are said to be abandoned ones, being dry. The one in use may be est -mated to cost Rs.100/-. There is not much tree growth on the plot. The enclosed schedule prepared by the Revenue Inspector gives out the details of the tree growth existing on the plot. It has been valued at Rs.82/-, which estimate seems to me to be fair.

6. The compensation for the land, buildings, trees, wells, etc., thus comes to:-

	Rs.	A.	P.
Value of the buildings including outhouses, garden wall etc (i.e.Rs.1800) minus the depreciation at 35% i.e. Rs.630/-	1170-	0-	0
Value of the land 2.16 acres at Rs.300 per acre.	648-	0-	0.

13

Value of trees Rs.82 and of a well Rs.100. 182- 0- 0-

Total. 2.000- 0- 0.

7. To this above sum has to be added 15% extra i.e Rs.300/- on account of compulsory acquisition, and the total compensation payable to the Mulagarthus amounts to Rs.2300/-. The mulagar by ~~alienating~~ the land on mulageni has lost all his right to it and he is entitled only to the mulageni rental of Rs. 110/- per annum. He can have no reasonable complaint to make about the inadequacy of the compensation amount now fixed in view of the fact that it would bring him more than than the mulageni rental, if the amount is invested even at 5 % which is the lowest rate of interest now obtaining in the market. Even Government paper now fetches 6% interest.

8. The mulagenidar Mr.Venkatkrishna Rao does not appear to have paid any consideration to the mulagar to obtain the holding on mulageni. He is therefore entitled only to the value of the --- improvements effected by him and which have been detailed in the enclosed schedule dated 8-1-20 prepared by the Reveneue Inspector. These have been valued at Rs.217/- which seems to be a fair estimate. This sum together with 15% extra i.e Rs.32-8-9 or Rs.249-8-9 in all is thus due to the mulagenidar.

9. In the result, I award in all Rs.2300 (to the mula-gar Mr. Kanchan Venkataramanaya) and Rs. 249-8-9 to the mulagenidar (Mr. Venkatkrishna Rao) for the land and the buildings, trees etc. thereon. These will ~~Vest~~ vest in the Public Works Department of Government from this date.

10. The undersigned certifies that (a) Notices have been promulgated and served in accordance with section 9 of the Land Acquisition Act and thatevidence of promulgation and service forms part of the record.

(b) There is before me a plotted plan of the land to be acquired.

PUTTUR.
28th October 1921.

Sd. R. Shiva Rao,
Land Acquisition Collector
and Tahsildar of Uppinangady.

(True Copy.)

For Collector.

Statement dated 21-12-19 of Venkatramanaya son of Kanchan Sreappaya living at present at Uppumaniyadi before the Revenue Inspector, Puttur.

—

Heard Uppumaniyadi Tahsildar's order dated 20-12-19 and Collector's letter R.O.C.No 3638. Rev.19 connected with it, now read over to me. I do not consent to Government acquiring S.No 145/1 of Puttur, belonging to me. I have sent by post detailed petitions to the Collector & Divisional officer in this matter. If, however Government compulsorily acquire it I must consult my vakil B. Venkatkrishna Rao, who now holds it on mulgeni. To the best of my recollection the building has cost me about Rs 9000/- for its construction, and its further extensions about Rs 2050/-. In addition to this, considerable amounts have been spent now & then for sinking

10

Here hello: This is all I have to say. Heard read.

(Sd) Venkatramanayya
in Kannada

(True translation).
B.O.

A Thimmappaiya
English Head Clerk

WPP
31.1.22

Ref on c no 3638. Rev. 19.

R. H. Ellis, Esquire, I. C. S.
Collector of South Kanara

Notice

To,

M. R. Ry B. Venkatkrishna Rao Avl
Pleader Puttur.

Please take notice that it is proposed to acquire S.no 145/1 of Puttur cacha with buildings etc. thereon for a pubic purpose. You are therefore requested not to effect any improvements thereon.. Should you effect any improvements in spite of this notice you are hereby informed that you will not be paid any compensation in respect of such improvements.

South Kanara Collectors office, Mangalore
22. 12. 19

(Sd) R. H. Ellis
Collector

True copy
B.C.

A True translation
English Headclerk

WFL
31.1.22

22

Copy of letter No. 22, dated 26th January 1922 from the -- Government Pleader, Mangalore to the Collector of South Kanara.

****

Reference:- O.S.No.594/21 of Puttur Munsiff's Court.

I have the honour to forward herewith the draft of the ---- written statement to be filed in the above suit as also the counter to be filed in reply to the plaintiffs' petition for an interim -- injunction. On the merits I am of opinion that so long as the -- main provisions of the Land Acquisition Act, viz., the declaration under Section 6 and the notice under Section 9 of the Land Acquisition Act have been followed in acquiring the property, the plaintiffs are not entitled to impugn the legality of the acquisition proceedings from the mere fact that notice under Section 4 was not published and the measurements of the plot under Section 8 were not taken. The omission to give the notice under Section 4 is not a very material one and in the circumstances of the present case has not prejudiced the plaintiffs so long as the full particulars of the land proposed for acquisition are made known to them under the Section 6 notification. Besides, the plan prepared in the case gives the exact -- measurements and extent of the land acquired. When the whole of the sub division No.145/1 and not a portion thereof was proposed - for acquisition and when it was a plotted settlement sub division and when the mulgeni lease of the 2nd plaintiff gave all the ---- necessary particulars, it is idle for the plaintiffs to contend -- that they were not in a position to prefer their objections as --- regards the measurements, etc.

Further, whatever objection they may have to the acquisition proceedings or to the legality of the award passed by the Land --- Acquisition Officer, can more properly be preferred by them in the District Court on a reference under Section 18 of the Land Acquisition Act rather than by a suit in the Munsiff's Court as now --- instituted. On the whole, I am of opinion that both the plaintiffs' suit and the injunction petition may be successfully contested by -- Government.

23

It would be desirable in this case to seek for a transfer of the suit from Puttur to some Court in Mangalore as otherwise there may be a good deal of difficulty experienced by Government in ----- getting the necessary evidence in the case.

The records sent are herewith returned.

*****

(True Copy)

31/12

For Collector.

Copy of letter from M.R.Ry., M. Shiva Rao, Avl.,Pleader Puttur, to the Collector of South Kanara, dated 31st August '21

****

With reference to the proceedings initiated recently to -- acquire the house and compound of Kanchan Venkatramanaya of Bajathur village in Uppinangady Taluk in the occupation of Mr. B. V.Krishna Rao, Pleader, Puttur, under perpetual tenancy, I am instructed to bring to your notice that the entir proceedings are ab initio void for failue to publish the preliminary notification as required by section 4 of the Land Acquisition Act. The publication under section 6 is intended to shut up discussion and contest over the question whether the land is required for a public purpose and it cannot in any way do away with the legal obligation to publish the notofication under section 4. Even after the publication of the notification under section 6 the clear provisions of the Act have been infringed at every step but it is not my purpose to take exception to such infringements at this stage. It is the initial illegality referred to above which I am asked to press on your attention so that further proceedings may be dropped. Otherwise, my clients will be obliged to file a suit against the Secretary of State for India in council for a declaration that the notification under section 6 and the subsequent proceedings are null and void and for a permanent injunction restraining Government from taking any action on the sole authority of the said notification, the cause of action for th e suit having arisen in Puttur in July and August 1921. I request the favour of your treating this as a suit notice required under the Code of Civil procedure.

2. I may inform you that, should you feel any doubt in the matter, I am prepared to discuss the matter personally with you and satisfy you that the Acquisition Proceedings should be dropped both on this account and for other reasons, which I reserve for ~~other reasons, which I reserve for~~ personal communication, if an opportunity is given.

I hev etc.

Sd. M.Shiva Rao,
Pleader.

/True Copy/

IN THE COURT OF THE DISTRICT MUNSIFF OF PUTTUR.

Original Suit No.594 of 1921.

Between.

1. Kanchan Venkatramanaya.
2. B. Venkat Krishna Rao. Plaintiffs.

And

The Secretary of State for India in Council. Defendant.

*****

Written statement of the defendant under Order VIII Rule 1 of the Codeof Civil Procedure, 1908.

The defendant begs to state as follows:-

1. Plaintiffs' suit is vexatious and unsustainable at law.

2. The garden and the buildings specified in the plaint ---- schedule, being required for a public purpose, was acquired by -- Government under the provisions of the Land Acquisition Act and - the award was passed by the Land Acquisition Officer in that ---- connection on the 28th October 1921.

3. Before passing orders under Section 11 of the Act, the --- declaration under Section 6, the notice under Section 9, were duly published, and the objections of plaintiffs considered, and all - the other essentials for a valid award strictly followed.

4. It is not true that Government had failed to take out all - the steps which it was obligatory on them to take under the provisions of the Land Acquisition Act. Neither is it a fact that -- there have been any such irregularities or any illegal acts of -- omission and commission so as to vitiate the proceedings taken -- under the Act to acquire the property. This defendant puts ---- plaintiffs to the strict proof of the allegations made by them in this connection in para 6 of the plaint.

5. Even if there have been any omission or irregularity in the procedure followed in the said acquisition proceedings, they are not such as to vitiate the award or such as to affect the ------ plaintiffs prejudicially in any way. Defendant does not admit, however, that there have been any irregularities or omissions --- which can be said to be material or which affects to any extent -

the legality of the acquisition proceedings.

6. It is false that the acquisition proceedings were the result of any personal ill-will or animosity on the part of the Revenue -- Divisional Officer Mr. M. S. Pais or any other Revenue Official as alleged by the plaintiffs.

7. The several imputations made by plaintiffs in paras 3, 4 and 5 of the plaint are unwarranted and quite improper to say the least of it. The acquisition of the property was necessitated to meet a urgent want as no other suitable building was available at Puttur - for quarters to the Revenue Divisional Officer. It is not true -- that there are other equally good buildings in Puttur which could - have been acquired instead of the plaint building.

8. The plaint building was till the date of the 2nd plaintiff's mulgeni all along in the occupation of the Government Officials --- being known as the Deputy Collector's Bungalow. It is on account of 2nd plaintiff's getting the mulgeni of the same from the 1st --- plaintiff that necessitated the acquisition proceedings in question

9. It is further denied that 2nd plaintiff has been put to any such inconvenience and loss as is attempted to be made out by him - in the plaint or that 2nd plaintiff would experience any difficulty in procuring some other site for himself.

10. Plaintiffs all along have most improperly showed a determina tion to prevent, if possible, the property from being acquired by - Government. They have thrown obstacles at each stage of the acqui sition proceedings and the 2nd plaintiff especially has obstructed as far as it lay in his power, the Land Acquisition Officer and R- other subordinates acting under his orders, from doing their duty in the case. The conduct of the plaintiffs has been such as to disentitl them to any relief at the hands of the Court.

11. The imputations in the plaint, of spite, ill-will, hurry and malafides, are all denied. The award made by the Land Acquisition Officer is perfectly legal and equitable and plaintiffs are bound - by the said award and the acquisition proceedings, until they are - modified or set aside by the District Court acting under Section 18 of the Act.

12. Plaintiffs have no cause of action against the defendant and they are not entitled in law to question in this suit the Government notification under Section 6 published in the Fort St. George Gazette dated 26th July 1921, or any other proceeding in connection ----- therewith, nor has this Court any jurisdiction to entertain this suit.

13. Plaintiffs are not entitled to the injunction sought by -- them or for any other relief.

It is prayed that the plaintiffs' suit may be dismissed with costs.

Mangalore, 30. 1. 22

P Meanbran 31-1-22
Collector.

30.1.22

A2/5/12

To Seay

The main question is how far Sec 4 of Act I of 1894 is an imperative provision of the law. It deals with preliminary investigation. The Section uses the term "Shall". Non compliance with the provisions of the section on the part of Govt is admitted. But as pointed out by the local Govt. the omission is probably not material and since the parties were fully aware of Govts intentions. Attention is however solicited to paras 5 and 7 of B.S.O. 1896. Land is not ordinarily to be entered upon otherwise than in accordance with the provisions of the Act and no subsequent proceedings will have retrospective operation. In 30 M. 576 it appears to have been held that no spl notice was issued to the pltff does not vitiate the award if otherwise there has been substantial compliance with the provisions of the Act. May the Suit be defended?

Vol IV Govt Acts p 366

Up 2036 2059 Vol I

Section 4 appears to be an enabling provision in its terms & for preliminary investigation or survey, if necessary. It looks as if it is not nece. to publish a notifn under that Section, if no such investigation or survey is nece. This spirit of the Section has been brought out in para 7 B.S.O. 1896 which says that a notifn under this Section is the first step in entry on the land to which objection may be taken & the pltff is quite different from taking possn. The Suit may be defended.

M 8.2.22

P.T.O.

Sec. 4. provides for a case where it is not definitely known whether the land will be suitable for the purpose in view. If there is no necessity to make an investigation for this reason. — where land is obviously suitable — Govt can proceed straightaway under Sec. 6. (See 8. "unless it has been already marked out under Sec 4").

This is the normal course

Lee
5.2.22

After publication of notification under Sec 6. L.A. Officer might have entered on the land for measuring & valuing. It is not known why L.A.O. did not do so.

N.U.C.F.

The notice given to Plts. on 22.12.19. before publication of notification under Sec 6. for asking them not to make improvements was illegal. Plts. could have disregarded it. However, if L.A.O. has excluded in the award value of improvements effected between that notice & date of publication of notification (26.7.21) under Sec. 6. (See 4.12. C.F.). Plts remedy is the reference under Sec 18. — (See 23 secondly)

It is not illegal to ask, though it confers no obligation

N. 21. C.F.
+ 12 C.F.

Suit may be defended. W.S. approved Hq 13.2.22

Lee
9.2.22

Lee
9.2.22

S. 4 is imperative — probably badly worded. B.S.O. 90 supports the view in the above note, which is quite reasonable. The opinion does not seem to have effected owner adversely. Defend.

H.H.
9.2.22

IN THE COURT OF THE DISTRICT MUNSIFF OF PUTTUR.

R.I.A.No.1512/1921.

Re.O.S.No.594/1921.

A F F I D A V I T.

I, R. S. Shiva Rao, son of R. Rama Rao, aged about 39 years now Sub Magistrate of Buntwal, Saraswath by caste, do solemnly -- affirm and say as follows:-

1. That Government in their notification under Section 6, Act I of 1894 having notified that the land No.145/1 belonging to the 1st plaintiff was to be acquired, I was appointed the Land Acquisition Officer to conduct the necessary proceedings and acquire the land.

2. The notification under Section 4 was not published and the land proposed for acquisition was not measured under Section 8 as the whole sub division 145/1 was to be acquired and the said land had been already plotted and measured at the settlement. Besides, the measurements of the plot were well-known to both the plaintiff Under the circumstances it was unnecessary to publish any notification under Section 4 or to measure the plot once again under -- Section 8. Besides, the plan prepared in the case gave all the necessary particulars regarding the measurements, etc.

3. As regards the buildings on the plot acquired they were not got measured as the valuation of the garden and buildings was made with reference to the mulgeni rental shown in the mulgenichit --- executed by ~~the~~ 1st plaintiff in favour of 2nd plaintiff. It may be stated also that when I deputed the Revenue Inspector of Puttur Firka to prepare a detailed valuation statement in respect of the land and the improvements thereon with the assistance of the Local Fund Overseer, he was obstructed by 2nd plaintiff and prevented - from entering upon the premises and making the valuation, though 2nd plaintiff had previously consented in the matter. The 2nd plaintiff had openly thrown difficulties in the way of my valuing the property acquired and in taking measurements of the buildings. When the plaintiffs themselves are to blame in the matter they -- have no reason to complain against the so-called omissions on the

29

part of myself or other Revenue Subordinates.

4. The building acquired was till it was acquired by the 2nd plaintiff on mulgeni all along been in the occupation of the --- Revenue Divisional Officer of Puttur Division. In fact it was originally built on his account. There does not appear to be - other suitable building in Puttur which is fit for his residence. On the other hand the 2nd plaintiff, being a Vakil of much local influence, could easily secure some other site in Puttur for his use.

All this is true.

Mangalore,
27th January 1922. (Signed) R. Shiva Rao.

Solemnly affirmed and signed before me this 27th day of - January 1922 in Mangalore.

(Signed) A. Dejappa Shetty,
Village Magistrate of Aikala.

(True Copy)

P Thambiran 31.1.22

For Collector.

A 646/22

Suits (S. kanara) Puttur Dt. Munsiff - As. No 594/21 —
Divl Officer's residence - Acquisition Proc - Defence sanctioned

Res. No 157
9-2-22

The Board sanctions the defence of the Suit and approves the drafts.

Fee
9. 2. 22

9.2.22 To the Collr
9.2.22 S. Kanara.
with records As at P 3 Ch
3 (omitting translation p 15 Ch), 4, 1

Deputy Secy
9.2.22

Note sheet on back of p 27 Ch.

AM
9/2/22

9.2.22